STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 29, 2001
v SHARIF BAIG, M.D., Defendant-Appellant.	No. 215653 Wayne Circuit Court Criminal Division LC No. 94-007608

Before: Sawyer, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a bench trial, of sixteen counts of filing a false Medicaid claim, MCL 400.607(1); MSA 16.614(7)(1), one count of conspiracy to file a false Medicaid claim, MCL 750.157a; MSA 28.354(1) and MCL 400.606(1); MSA 16.614(6)(1), and one count of conspiracy to deliver prescription forms, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(f); MSA 14.15(7401)(2)(f). The trial court sentenced defendant to a term of five years' probation, and imposed a $5,000 fine and 2,500 hours of community service. We affirm.

Defendant first raises a challenge to the sufficiency of the evidence at trial. Specifically, defendant argues that the prosecution did not present sufficient evidence to sustain his convictions of filing false Medicaid claims under MCL 400.607(1); MSA 16.614(7)(1), which provides in pertinent part:

> A person shall not make or present or cause to be made or presented to an employee or officer of this state a claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, upon or against the state, *knowing the claim to be false.* [Emphasis supplied.]

Our Supreme Court recently articulated the well-settled test for reviewing sufficiency claims in *People v Nowack,* 462 Mich 399, 400; 624 NW2d 761 (2000):

> [W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found

that the essential elements of the crime were proven beyond a reasonable doubt. [*Id.*, quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).]

To establish that a defendant filed a false Medicaid claim in violation of § 7 of the Medicaid False Claim Act, MCL 400.601 *et seq*.; MSA 16.614(1) *et seq*., "the prosecution must prove (1) the existence of a claim, (2) that the accused makes, presents, or causes to be made or presented to the state or its agent, (3) [a] claim [ ] made under the Social Welfare Act, 1939 PA 280, MCL 400.1 *et seq*., MSA 16.401 *et seq*., (4) the claim is false, fictitious or fraudulent, and (5) the accused knows the claim is false, fictitious or fraudulent." *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997), citing *In re Wayne Co Prosecutor*, 121 Mich App 798, 801-802; 329 NW2d 510 (1982).

On appeal, defendant complains that the prosecutor did not present sufficient evidence on which a rational factfinder could conclude that he knew that the claims filed were fraudulent.[1] The knowledge requirement of § 7 can be "inferred from one's actions, and . . . includes both actual and constructive knowledge." *People v Perez-DeLeon*, 224 Mich App 43, 48; 568 NW2d 324 (1997) (citation omitted).[2] According to Black's Law Dictionary, (6th ed.) p 217, an individual has constructive knowledge "if . . . by exercise of reasonable care [one] would have known a fact . . . ." Viewing the record evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented on which a rational factfinder could conclude that defendant had constructive knowledge that the Medicaid claims filed were fraudulent.

At trial, the prosecution argued that the Medicaid claims submitted by defendant were fraudulent because defendant used his provider code to bill Medicaid for services rendered by an unlicensed individual named Tom Claringbold.[3] A review of the record demonstrates that Claringbold began working for defendant in 1991. Several of defendant's employees testified that it was common knowledge throughout defendant's offices that Claringbold was not a licensed physician, but that he was referred to by both staff and patients as "Dr. Tom." The record also demonstrates that Claringbold routinely examined patients, diagnosed their ailments, ordered x-rays, and prescribed medications without supervision by a licensed physician.

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[1] The word "knowing" as defined in § 7 "means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and this his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present." [MCL 400.602(f); MSA 16.614(2)(f).]

[2] Further, MCL 400.608(1); MSA 16.614(8)(1) states that "[i]n a prosecution under this act, it shall not be necessary to show that the person had . . . actual notice that the acts by the person acting on his or her behalf occurred to establish the fact that a false statement or representation was knowingly made."

[3] The prosecution admitted into evidence at trial a certified copy of a document from the Department of Commerce confirming that Claringbold was not licensed as a medical doctor, doctor of osteopathic medicine, or physician's assistant.

The prosecution also presented evidence that defendant managed the administrative affairs and supervised the employees of his multiple offices in the metropolitan Detroit area. Defendant recruited physicians and physician's assistants for his offices. Defendant also reviewed all of the billing documents before they were submitted to Medicaid. These billing documents included the notes physicians made during the treatment of patients, and many of these files included notes prepared and signed by Claringbold after he examined a patient. Evidence was also presented that patient services performed by Claringbold were billed to Medicaid using defendant's provider code. Claringbold also issued prescriptions using defendant's prescription letterhead on a regular basis, at times signing defendant's name.

The prosecution also presented the testimony of three health-fraud investigators from the Department of the Attorney General who attended defendant's offices and were treated by Claringbold on several different occasions in 1993. During these visits, Claringbold prescribed medications, ordered x-rays, and diagnosed the agents' ailments. These services were subsequently billed to Medicaid. In our opinion, the record contains ample evidence demonstrating that defendant knew that the claims he billed to Medicaid were fraudulent.

Defendant next asserts that there was insufficient evidence that he *knowingly* submitted fraudulent claims to Medicaid because he was unaware of the limits of his discretion to delegate activities to an unlicensed person. In support of this argument, defendant asserts that the delegation provision in the Public Health Code, MCL 333.16215(1); MSA 14.15(16215)(1) is vague because it does not specify what tasks, acts and functions can be properly delegated by a licensed physician to an unlicensed person.[4] We disagree.

We review de novo a defendant's challenge to a statute on the basis of vagueness. *People v Knapp*, 244 Mich App 361, 374; 624 NW2d 227 (2001). A statute is impermissibly vague if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct prohibited, and (3) it is so indefinite that it confers unlimited and unstructured discretion on the trier of fact to determine whether the law has been violated. *People v Noble*, 238 Mich App 647, 651; 608 NW2d 123 (1999). Defendant's challenge requires us to consider whether the delegation provision of the Public Health Code provided fair notice of the conduct proscribed. A statute gives fair notice where it provides a person of ordinary intelligence with a reasonable opportunity to know what conduct is prohibited. *People v Nimeth*, 236 Mich App 616, 623; 601 NW2d 393 (1999).

The delegation provision[5] of the Public Health Code, MCL 333.16215(1); MSA 14.15(16215)(1) provides:

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[4] Defendant also argues that the pertinent Medicaid manuals governing his conduct are impermissibly vague. In *Perez-DeLeon, supra*, the Court, when confronted with an analogous argument, observed that the proper inquiry is whether "the *statute* [in question] fails to give sufficient notice." *Id.* at 51 (emphasis in original). Thus we are required to review the delegation provision of the Public Health Code to determine whether it is vague with regard to what activities a licensed physician may delegate.

[5] We refer to the delegation provision of the Public Health Code as it read in 1994 when
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> A licensee who holds a license other than a health profession subfield license may delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the licensee's profession and will be performed under the licensee's supervision. *An act, task or function shall not be delegated under this section which, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of a licensee under this article.* [Emphasis supplied.]

MCL 333.16109(2); MSA 14.15(16109)(2) defines "supervision" as:

> the overseeing of or participation in the work of another by a health professional licensed under this article in circumstances where at least all of the following conditions exist:
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> (a) [t]he continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional.
>
> (b) [t]he availability of a licensed health professional on a regularly scheduled basis to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further education the supervised individual in the performance of the individual's functions.
>
> (c)[t]he provision by the licensed supervising health professional of predetermined procedures and drug protocol.[6]

Because defendant's vagueness challenge does not implicate First Amendment freedoms, we review the pertinent statute "in light of the particular facts at hand without concern for the hypothetical rights of others." *People v Vronko*, 228 Mich App 649, 652; 579 NW2d 138 (1998), citing *People v Howell*, 396 Mich 16, 21 238 NW2d 148 (1976). Consequently, "[t]he proper inquiry is not whether the statute *may* be subject to impermissible interpretations, but *whether the*

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defendant was charged. The language of the delegation provision was amended by 1999 PA 60.

[6] Delegation is further defined in the Public Health Code as:

> an authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions that fall within the scope of practice of the delegator and that are not within the scope of practice of the delegatee and that, in the absence of the authorization, would constitute illegal practice of an unlicensed profession. [MCL 333.16104(1); MSA 14.15(16104)(1).]

statute is vague as applied to the case at bar." *Vronko, supra* at 652, citing *People v Harbour*, 76 Mich App 552, 558; 257 NW2d 165 (1977) (emphasis supplied). In other words, a defendant's standing to raise a vagueness challenge is contingent on a showing that the statute is vague with regard to his specific conduct. *People v Al-Saiegh*, 244 Mich App 391, 397 n 5; 625 NW2d 419 (2001).

Defendant argues that the language in the delegation statute prohibiting the delegation of "[a]n act, task or function . . . which, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of a [licensed physician]" is impermissibly vague. We disagree. Viewed in light of the specific facts at hand, we believe § 16215 provided defendant with adequate notice that allowing Claringbold to examine and diagnose patients without supervision while holding himself out as a licensed physician was conduct prohibited by the statute. Section 16215 clearly limits the delegation of activities by a licensed physician to those that do not require the skill, judgment and education of a licensed physician. The statute also requires that any such delegation be supervised. In our opinion, defendant cannot plausibly claim that he was unaware that his conduct was prohibited by the delegation statute where the activities delegated to Claringbold, performed without defendant's supervision, clearly required the skill, judgment and level of education set forth in the statute.[7]

Likewise, we reject defendant's claim that reversal of his convictions is warranted because the trial court reached inconsistent verdicts. We recognize the well-settled principle that a trial court, sitting as the trier of fact, may not render inconsistent verdicts. See *People v Walker*, 461 Mich 908; 603 NW2d 784 (2000). Defendant argues that by convicting defendant and not convicting the two corporate defendants that were owned by defendant,[8] the trial court's verdicts were inconsistent. Although the two corporate defendants were tried jointly with defendant,[9] the trial court's ruling omits any reference to them. In our opinion, the present appeal does not present a case where a trial judge reached inconsistent verdicts with regard to the same defendant. Rather, the trial court, rendering its thirty-page written opinion one year after

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[7] We note that these activities fall squarely within the definition of the practice of medicine set forth in MCL 333.17001(d); MSA 14.15(17001)(d), which provides:

> Practice of medicine means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts. [(Internal quotation marks omitted).]

[8] It appears from the record that defendant was the sole owner of the two corporations, Health Stop Medical Center, P.C. and Park Avenue Medical Center, P.C.,

[9] The felony information included in the lower court file does not list the two corporate defendants.

trial, simply omitted any reference to the corporate defendants, and did not either convict or acquit them of any of the charged counts.[10]

We do not believe that reversal of defendant's convictions is warranted under the present circumstances. We do not share defendant's view that he was denied his right to due process by the trial court's action. "The right to due process of law merely requires that a defendant cannot be convicted of an offense unless each element of the offense has been proven beyond a reasonable doubt." *People v Torres (On Remand)*, 222 Mich App 411; 564 NW2d 149 (1997), citing *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970). There is no indication in the record that defendant's due process rights were denied. In addition, defendant has failed to persuade us that the trial court's omission of the corporate defendants in its judgment "undermined the reliability of the verdict [convicting defendant]." See *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000) (citations omitted).[11]

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell

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[10] Defendant raised the issue of inconsistent verdicts in the trial court during the hearing on his motion for a new trial. During the hearing, the trial court, which was not the same trial court that presided over the trial in this matter, concluded that the failure to reference the corporate defendants amounted to an acquittal on all counts and entered an ordering acquitting the corporations. We do not share this view. Rather, it is clear from a review of the record that the trial court did not reach a verdict in any manner regarding the corporate defendants. Black's Law Dictionary, (6th ed.) p 1080 defines verdict as "a true declaration" and "the formal decision or finding made by a [trial court.]" Because the trial court did not make any declaration, decision or finding with respect to the corporate defendants, a verdict was not rendered.

[11] Likewise, we reject defendant's assertion that his convictions for knowingly filing false Medicaid claims are inconsistent with his acquittal of the charge of conspiring to hold Claringbold out as a licensed physician. The trial court concluded that there was insufficient evidence to prove the requisite agreement between defendant and Claringbold to hold Claringbold out as a licensed physician. However, this conclusion did not foreclose the trial court from finding that defendant had constructive knowledge that the claims submitted to Medicaid were fraudulent.